

Dear John Slater,

Thank you for your Freedom of Information request of 29 March 2017. You asked:

“Dear Department for Work and Pensions,

The DWP has previously described the new Health and Work Conversation (“HWC”) as follows:

“The Health and Work Conversation is a conversation rather than a tool. The conversation will consist of the following principal elements:

- An opportunity for the Work Coach to get to know individuals, to build rapport and trust, and to understand more about the individual as a whole person: their background and the things that really matter to them in their lives.*
- A goal-setting exercise, in which the individual chooses a short-term personal goal and works with the Work Coach to plan steps to achieve their goal. This goal can be related to health or work, but does not need to be about either of these. Individuals will identify ways to overcome possible obstacles they face in their everyday lives, to increase their motivation and build resilience. Work Coaches will use discretion throughout to ensure that these exercises are used only where circumstances are appropriate.*
- The HWC will be followed by an action planning exercise, in which the Work Coach and individual will work together to devise a Claimant Commitment once it is introduced.*
- The work coach will inform the claimant about the support available to help them to improve their situation.”*

It has also confirmed that the HWC is a work-focused interview (“WFI”).

The Welfare Reform Act 2007 states that a “work-focused interview” means an interview by the Secretary of State conducted for such purposes connected with getting the person interviewed into work, or keeping him in work, as may be prescribed.”

ESA Regulations 2008 Regulation 55 prescribes a WFI as:

“The purposes of a work-focused interview are any or all of the following—

- (a) assessing the claimant’s prospects for remaining in or obtaining work;*
- (b) assisting or encouraging the claimant to remain in or obtain work;*

(c) identifying activities that the claimant may undertake that will make remaining in or obtaining work more likely;
(d) identifying training, educational or rehabilitation opportunities for the claimant which may make it more likely that the claimant will remain in or obtain work or be able to do so;
(e) identifying current or future work opportunities, including self-employment opportunities, for the claimant, that are relevant to the claimant's needs and abilities.”

It is difficult to reconcile the legal definition of a WFI with the proposed HWC. There does not appear to be any prescribed powers for the Secretary of State to require an ESA claimant to discuss their health or set health related goals with a work coach at a WFI.

RFI1: Please direct me to the legislation prescribing powers to the Secretary of State that requires the ESA claimant at the HWC or any other WFI to discuss their health and set health related goals. I note that the Department has already stated that people will not be expected to disclose sensitive personal health data as part of the Health and Work Conversation but this is a specific request about information held (or I can be directed to) not the Department's opinion.

The potential risk to ESA claimants is considerable as during the assessment phase that the DWP is proposing the HWC take place it is likely that for many claimants they won't have a formal diagnosis, won't have been seen by specialist (i.e Consultant) and won't have been assessed by an approved healthcare professional to assess their fitness for work. The Department will be aware that is a mandatory requirement that any work-related activity (i.e. the outcome of a WFI) must be tailored appropriately to help prepare for work the claimant can do whilst managing their health condition and/or disability at work. No doubt the Department will be aware that unless it can demonstrate that it is meeting all the requirements of WFI for the HWC work coaches will be acting outside of the Secretary of State's prescribed powers (i.e. unlawfully) and the HWC will cease to be mandatory.

RFI2: How will the work coach meet the mandatory requirement to tailor the output of the HWC to the claimant given they can't compel them to discuss their health and will not have the result of a work capability assessment? (Even if claimants voluntarily discuss their health, work coaches are not qualified to know what are suitable activities for specific claimants based on medical information. That is normally the role of occupational health doctors or guidance from approved healthcare professionals). Whilst this is framed as a question it is reasonable to assume that the DWP has thought this through prior to announcing the introduction of the HWC and holds such information. “

Our Response

RFI1: Legislation prescribing powers to the Secretary of State to require a claimant at the HWC or other WFI to discuss their health and set health related goals does not exist. The HWC is claimant led so claimants can decide whether they want to discuss their health or set a health related goal.

RFI2: The HWC will be tailored to meet the needs of the individual and allows for an open and honest conversation regarding issues affecting claimants. If claimants do not wish to discuss their health condition then the work coach will tailor the discussion based on what the

claimant is comfortable sharing. It is not the role of the work coach to give any health advice during the conversation but they can signpost or refer the claimant to a partner organisation, with their agreement, should that be appropriate.

If you have any queries about this letter please contact me quoting the reference number above.

Yours sincerely,

DWP Strategy Fol Team

Your right to complain under the Freedom of Information Act

If you are not happy with this response you may request an internal review by e-mailing freedom-of-information-request@dwpgsi.gov.uk or by writing to DWP, Central Fol Team, Caxton House, Tothill Street, SW1H 9NA. Any review request should be submitted within two months of the date of this letter.

If you are not content with the outcome of the internal review you may apply directly to the Information Commissioner's Office for a decision. Generally the Commissioner cannot make a decision unless you have exhausted our own complaints procedure. The Information Commissioner can be contacted at: The Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow Cheshire SK9 5AF www.ico.gov.uk